

DOCKET FILE COPY  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 93M-675

40133

In the Matters of )  
)  
Application of )  
)  
CAPITOL RADIOTELEPHONE INC. )  
d/b/a Capitol Paging )  
1420 Kanawha Blvd. E. )  
Charleston, West Virginia 25301 )  
)  
For a Private Carrier Paging Facility )  
on the Frequency 152.480 MHz in )  
Huntington/Charleston, West Virginia )  
)  
and )  
)  
Imposition of Forfeiture Against )  
)  
CAPITOL RADIOTELEPHONE INC. )  
d/b/a Capitol Paging )  
1420 Kanawha Blvd. E )  
Charleston, West Virginia 25301 )  
)  
Former Licensee of Station WNSX-646 in )  
the Private Land Mobile Radio Services )  
)  
and )  
)  
Revocation of License of )  
)  
CAPITOL RADIO TELEPHONE INC. )  
d/b/a Capitol Paging )  
1420 Kanawha Blvd. E )  
Charleston, West Virginia 25301 )  
)  
Licensee of Station WNDA-400 in the )  
Private Land Mobile Radio Services )  
)  
and )  
)  
Revocation of License of )  
)  
CAPITOL RADIO TELEPHONE INC. )  
d/b/a Capitol Paging )  
1420 Kanawha Blvd. E )  
Charleston, West Virginia 25301 )  
)  
Licensee of Station WNWW-636 in the )  
Private Land Mobile Radio Services )

PR DOCKET NO. 93-2311 ✓

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FCC MAIL SECTION

and )

Revocation of License of )

CAPITOL RADIOTELEPHONE COMPANY, INC. )

1420 Kanawha Boulevard East )

Charleston, West Virginia 25301 )

Licensee of Station KWU-373 in the )

Public Mobile Radio Service )

and )

Revocation of License of )

CAPITOL RADIOTELEPHONE COMPANY, INC. )

P. O. Box 8305 )

South Charleston, West Virginia 25303 )

Licensee of Station KUS-223 in the )

Public Mobile Radio Service )

and )

Revocation of License of )

CAPITOL RADIOTELEPHONE CO., INC. )

1420 Kanawha Boulevard East )

Charleston, West Virginia 25301 )

Licensee of Station KQD-614 in the )

Public Mobile Radio Service )

and )

Revocation of License of )

CAPITOL RADIOTELEPHONE COMPANY, INC. )

1420 Kanawha Boulevard )

East Charleston, West Virginia 25301 )

Licensee of Station KWU-204 in the )

Public Mobile Radio Service )

MEMORANDUM OPINION AND ORDER

Issued: October 25, 1993

Released: October 26, 1993

1. Under consideration is "Joint Motion To Change Issue" filed September 30, 1993 by The Chief, Private Radio Bureau, Capitol Radiotelephone Company, Inc. (a/k/a Capitol Radiotelephone, Inc. or Capitol Radio Telephone, Inc.) d/b/a Capitol Paging (Capitol) and RAM Technologies, Inc. (RAM).

2. As reflected in the Hearing Designation Order (HDO) (FCC 93-381), released August 31, 1993), this matter involves the facts and circumstances surrounding Capitol's operation of private carrier paging (PCP) station WNSX-646 at sites in Huntington and Charleston, West Virginia. Capitol proposed to operate its station on the frequency 152.480 MHz, a shared private land mobile paging channel already authorized at these geographical locations to RAM, licensee of station WNJN-621. Capitol, which had been providing radio common carrier paging services, and RAM, which had been providing private carrier paging service, are competitors in these particular markets in the provision of paging services. RAM objects to a grant of Capitol's application. Following denial of its petition to deny, RAM filed a petition for reconsideration. The Commission then granted Capitol a license for station WNSX-646 subject to the outcome of RAM's pending petition for reconsideration. The Commission, in the HDO, granted RAM's petition for reconsideration, vacated its denial of RAM's petition to deny, and returned Capitol's application to pending status. The Commission stated in this regard that "Capitol is without authority to operate station WNSX-646" (paragraph 5).

3. The parties now urge, under Section 1.229 of the Rules, that Capitol's application should no longer be designated for hearing and that, in lieu thereof, the order to show cause why certain stations licensed to Capitol should not be revoked should now include station WNSX-646. They argue that grant of the petition for reconsideration and the return of Capitol's application to pending status was in error since RAM had voluntarily withdrawn the petition for reconsideration by letter dated April 10, 1991. A copy of that letter with the Commission's time stamp indicating Commission receipt of the document has been appended to the motion.

4. The motion will be denied. The parties label their pleading as a motion to change issues under Rule 1.229. However, they do not specify the issue or issues which they wish the Presiding Judge to change and it is clear that the relief they seek does not fall within the ambit of Rule 1.229. In reality, the parties have requested the Presiding Judge to reconsider the Commission's action returning Capitol's application to pending status and to restore Capitol's license and its authority to operate station WNSX-646. However, the Presiding Judge lacks the authority to review the propriety of the Commission's action and to grant the relief sought. See Frank H. Yemm, 39 RR 2d 1657, 1658-1659 (1977); see also Anax Broadcasting Inc., 87 FCC 2d 483, 486 (1981).<sup>1</sup> Moreover, the parties incorrectly assume that the filing of the withdrawal letter automatically resulted in the dismissal of the petition for reconsideration. That is not the case. Dismissal of the petition required action by the Commission. Since no such action was taken (regardless of the reasons), the petition remained in a pending status. Therefore, the suggestion

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<sup>1</sup> Section 1.106(a)(1) of the Rules provides that a petition for reconsideration of an order designating a case for hearing will be entertained by the Commission only if it relates to an adverse resolution with respect to petitioner's participation in the proceeding.

that the Commission was precluded from acting on RAM's petition for reconsideration is without merit.<sup>2</sup>

Accordingly, IT IS ORDERED, That the "Joint Motion To Change Issue" filed September 30, 1993 by The Chief, Private Radio Bureau, Capitol Radiotelephone Company, Inc. (a/k/a Capitol Radiotelephone, Inc. or Capitol Radio Telephone, Inc.) d/b/a Capitol Paging and RAM Technologies, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "Joseph Chachkin". The signature is written in a cursive, flowing style.

Joseph Chachkin  
Administrative Law Judge

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<sup>2</sup> The parties do not challenge the Commission's stated justification for rescinding Capitol's authority to operate station WNSX-646.